

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID MICHAEL BAILEY,
Plaintiff,
v.
COUNTY OF STANISLAUS, et al.,
Defendants.

No. 2:24-cv-03231-JAM-AC

**ORDER GRANTING MOTION TO DISMISS
IN PART**

Defendants the County of Stanislaus ("County"), Deputy Rose, Deputy Larson, and Deputy Garcia have moved to dismiss several of Plaintiff David Michael Bailey's ("Plaintiff") federal and state law claims stemming from the fatal police shooting of his nephew in 2024. For the reasons set forth below, Defendants' motion will be granted in part and denied in part.

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

This case arises out of the fatal police shooting of Plaintiff's nephew, Kevin Frey ("Frey"), on May 5, 2024. See Second Am. Compl. ("SAC") ¶¶ 1, 27, ECF No. 36. Frey was shot after law enforcement responded to a 911 call in which the caller reported that a man, later identified as Frey, was trespassing on his property in Stanislaus County, California. Id. ¶¶ 28-29. The caller noted Frey appeared to be either intoxicated or under

1 the influence of drugs. Id. ¶ 30. Defendant Rose, a deputy with
2 the Stanislaus County Sheriff's Department ("Sheriff's
3 Department"), responded to the call at approximately 4:11 p.m.,
4 and found Frey, who was homeless, "calmly lying underneath a tree
5 with his dog, several feet from the street." Id. ¶¶ 23-24, 31.
6 Defendant Rose informed Frey he was on private property, and Frey
7 responded he would leave. Id. ¶ 32. Defendant Rose informed
8 Frey he was not free to leave. Id. Nevertheless, Frey "slowly
9 and calmly" walked away from Defendant Rose. Id. ¶ 33. Frey did
10 not threaten or attempt to harm Defendant Rose, but informed
11 Defendant Rose that he had a knife he carried for his safety.
12 Id. Defendant Rose told Frey to put the knife down. Id. ¶ 35.
13 Frey, becoming irate, responded that he just wanted to leave.
14 Id. Frey put his knife in his backpack and continued walking
15 down the street. Id. ¶ 36.

16 Defendant Rose followed Frey in a patrol car yelling "stop,"
17 and pointing his handgun out of the window towards Frey, who sat
18 down underneath another tree. Id. ¶ 37. Defendant Rose
19 positioned himself 50 feet away from Frey. Id. ¶ 38. Defendants
20 Larson and Garcia, deputies with the Sheriff's Department, also
21 arrived at the scene and positioned themselves about 100 feet
22 away from Frey. Id. ¶¶ 23-24, 38. Finally, City of Turlock
23 Police Officer Diaz arrived accompanied by a K9 officer. Id.
24 ¶ 53. Defendant Rose spent 15 minutes speaking with Frey during
25 which time he realized Frey was mentally ill and requested a
26 crisis negotiation team. Id. ¶ 39. Frey became agitated as his
27 detention progressed. Id. ¶ 52.

28 At approximately 4:31 p.m., without waiting for the crisis

1 negotiation team to arrive, Defendant Garcia commanded Frey to
2 drop his knife or else "the K9 will bite him." Id. ¶ 55. In
3 response, Frey stood up and walked slowly and unsteadily towards
4 Defendant Rose. Id. ¶ 56. Frey's "slow, staggering walk was
5 consistent with the 911 caller's reports that he was
6 intoxicated." Id. ¶ 57. Frey "did not pose an imminent threat
7 of safety or death to anyone" as he "appeared frail and was
8 incapable of even maintaining a steady walk." Id. ¶¶ 58, 62.
9 Despite this, Defendant Larson shot Frey with his assault rifle
10 from about 100 feet. Id. ¶ 62. Frey died several minutes later
11 from the gunshot wound. Id.

12 Plaintiff brought this action on November 20, 2024, as
13 Frey's successor in interest, alleging causes of action under 42
14 U.S.C. § 1983 and state law. See ECF No. 1. Plaintiff alleged
15 that Frey's mother, Judy Frey, was Frey's successor in interest
16 at the time of his death, but that she had since died, making
17 Plaintiff, Frey's uncle, the successor. See id. ¶¶ 4, 8. The
18 Court dismissed Plaintiff's initial Complaint on April 15, 2025,
19 finding Plaintiff had not adequately pled standing to bring this
20 action as Frey's successor in interest. ECF No. 20. Plaintiff
21 filed his First Amended Complaint on May 2, 2025. ECF No. 21.
22 The Court subsequently dismissed Plaintiff's claims again for
23 failing to adequately plead standing as Frey's successor in
24 interest. ECF No. 35.

25 Plaintiff filed his operative Second Amended Complaint on
26 August 18, 2025, alleging seven causes of action for
27 (1) excessive force under 42 U.S.C. § 1983 against Defendants
28 Larson, Rose, and Garcia; (2) unreasonable seizure under 42

1 U.S.C. § 1983 against Defendants Larson, Rose, Garcia, and the
2 County; (3) due process violation under 42 U.S.C. § 1983 against
3 Defendants Larson and Rose; (4) municipal liability under 42
4 U.S.C. § 1983 against the County; (5) battery against Defendant
5 Larson and the County; (6) negligence against Defendants Larson,
6 Rose, Garcia, and the County; and (7) violation of the Bane Act,
7 California Civil Code section 52.1, against all Defendants. SAC
8 ¶¶ 67-135. Defendants filed the pending Motion to Dismiss (ECF
9 No. 38) Plaintiff's claims for lack of standing and for failure
10 to adequately plead his excessive force, unreasonable seizure,
11 negligence, and Bane Act claims. Plaintiff filed an Opposition
12 (ECF No. 40) and Defendants filed a timely Reply (ECF No. 42).
13 The matter was submitted without oral argument pursuant to Local
14 Rule 230(g). ECF No. 43.

15 **II. LEGAL STANDARD**

16 A Rule 12(b)(6) motion challenges the sufficiency of a
17 complaint for "failure to state a claim upon which relief can be
18 granted." Fed. R. Civ. P. 12(b)(6). The motion may be granted
19 only if the complaint lacks a "cognizable legal theory or
20 sufficient facts to support a cognizable legal theory."
21 Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th
22 Cir. 2008). The court assumes all factual allegations are true
23 and construes "them in the light most favorable to the nonmoving
24 party." Steinle v. City & Cnty. of San Francisco, 919 F.3d 1154,
25 1160 (9th Cir. 2019) (quoting Parks Sch. of Bus., Inc. v.
26 Symington, 51 F.3d 1480, 1484 (9th Cir. 1995)). That said, if
27 the complaint's allegations do not "plausibly give rise to an
28 entitlement to relief" the motion must be granted. Ashcroft v.

¹Iqbal, 556 U.S. 662, 679 (2009).

A complaint need contain only a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), not "detailed factual allegations." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). However, this rule demands more than unadorned accusations; "sufficient factual matter" must make the claim at least plausible. Iqbal, 556 U.S. at 678. In the same vein, conclusory or formulaic recitations of elements do not alone suffice. Id. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

In granting a motion to dismiss, a court must also decide whether to grant leave to amend. Leave to amend should be freely given where there is no "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment" Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Cap., LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). Dismissal without leave to amend is proper only if "the complaint could not be saved by any amendment." Intriplex Techs., Inc. v. Crest Grp., Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (quoting In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005)).

III. OPINION

A. Plaintiff Adequately Pleads Standing

As a threshold matter, Defendants argue that Plaintiff lacks standing to bring his claims because he has failed to comply with

1 state law rules governing survival actions. Mot. Dismiss at 4,
2 ECF No. 38-1. In particular, Defendants contend that
3 California's requirements for survival actions are codified in
4 Code of Civil Procedure section 377.32, which specifies that a
5 plaintiff must provide a declaration demonstrating "facts in
6 support" of their position as a decedent's successor in interest,
7 including the date and place of the decedent's death, and
8 attaching a certified copy of the decedent's death certificate.
9 Id. Defendants argue that, while "Plaintiff previously attached
10 Kevin Frey's death certificate to an earlier declaration, he has
11 never provided one for Judy Frey, nor has he stated the date of
12 her death." Id. Thus, Defendants argue Plaintiff's claims
13 cannot proceed until he "provid[es] the necessary death
14 certificate and date of death for Judy Frey" Id.

15 Plaintiff has filed declarations which comply with these
16 requirements, setting forth the dates and places of Kevin and
17 Judy Frey's deaths, and providing copies of their death
18 certificates. See generally Bailey Decl., ECF No. 15; Second Am.
19 Bailey Decl., ECF No. 41. Accordingly, Defendants' motion to
20 dismiss Plaintiff's claims for lack of standing is denied.

21 B. Plaintiff Fails to State an Excessive Force Claim
22 Against Defendants Rose and Garcia

23 Plaintiff asserts a Fourth Amendment excessive force claim
24 against Defendants Rose and Garcia, alleging they were "integral
25 participants in Deputy Larson's use of deadly force" when he shot
26 and killed Frey. SAC ¶ 75. Defendants argue Plaintiff has
27 failed to state a claim against either Defendant Rose or Garcia
28 as Plaintiff's allegations "do not plausibly establish that

1 either Defendant knew Deputy Larson intended to use deadly force
2 and acquiesced in such a plan or set in motion a series of acts
3 that they reasonably should have known would cause an
4 unconstitutional shooting." Mot. Dismiss at 5-6.

5 The Court agrees. Plaintiff does not allege Defendants Rose
6 and Garcia themselves used excessive force against Frey. Rather,
7 he alleges they were integral participants in Defendant Larson's
8 use of excessive force. Peck v. Montoya, 51 F.4th 877, 889 (9th
9 Cir. 2022) (quoting Hernandez v. Skinner, 969 F.3d 930, 941 (9th
10 Cir. 2020)). An official qualifies as an "integral participant"
11 where: (1) the official knew of and acquiesced in the
12 unconstitutional conduct as part of a common plan with those
13 directly responsible, or (2) the official set in motion a series
14 of acts that the official knew, or reasonably should have known,
15 would cause others to commit the constitutional injury. Id. at
16 891. In other words, the official must be more than a "mere
17 bystander." Bravo v. City of Santa Maria, 665 F.3d 1076, 1090
18 (9th Cir. 2011).

19 Here, Plaintiff does not plausibly allege that Defendants
20 Rose and Garcia were integral participants in Defendant Larson's
21 allegedly unconstitutional shooting. In relevant part, Plaintiff
22 alleges that Frey informed Defendant Rose he had a knife;
23 Defendant Rose ordered Frey to put down the knife and detained
24 him at gunpoint, at which point Defendants Garcia and Larson
25 arrived at the scene; Frey became increasingly agitated during
26 his interactions with Defendant Rose; Defendant Rose called a
27 crisis negotiation team but otherwise failed to de-escalate the
28 situation; while waiting for the crisis negotiation team,

1 Defendant Garcia threatened to release a K9 officer unless Frey
2 dropped the knife; in response, Frey began walking towards
3 Defendant Rose; and Defendant Larson shot Frey. SAC ¶¶ 31-39,
4 52-64. Accepting these allegations as true, they still do not
5 plausibly establish that either Defendant Rose or Garcia knew
6 Defendant Larson intended to use deadly force and acquiesced in
7 his plan to do so or set in motion a series of acts that they
8 "knew or reasonably should have known" would cause Defendant
9 Larson to shoot. See, e.g., Peck, 51 F.4th at 891-92 (holding
10 that non-shooting deputies who provided armed backup and secured
11 a perimeter around the plaintiff who was armed and acting erratic
12 could not be deemed integral participants because the shooting
13 was unplanned, there was no agreement or plan to use excessive
14 force, and nothing in their conduct set in motion the later
15 unconstitutional act).

16 Plaintiff argues that Defendants Rose and Garcia should be
17 held liable as integral participants because they
18 unconstitutionally seized Frey by holding him at gunpoint and
19 threatened to release a K9 officer on him which "set in motion"
20 the later shooting by Defendant Larson. Opp'n at 3-8, ECF No.
21 40. However, merely seizing an individual does not necessarily
22 implicate that excessive force will be used during that seizure.
23 Plaintiff's complaint does not include facts demonstrating that
24 Defendants Rose or Garcia knew or should have known their seizure
25 of Frey would lead to his fatal shooting. Indeed, it appears
26 that both Defendants attempted to resolve the encounter with Frey
27 through less lethal means: by calling a crisis negotiation team
28 (Defendant Rose) and by threatening use of a K9 officer

1 (Defendant Garcia).

2 Thus, Defendants' motion to dismiss Plaintiff's first cause
3 of action for excessive force against Defendants Rose and Garcia
4 is granted. The Court also denies leave to amend this claim, as
5 the Court finds that there are no additional facts that Plaintiff
6 can plead to establish Defendants Rose and Garcia were integral
7 participants in Defendant Larson's excessive use of force. Thus,
8 further amendment would be futile.

9 C. Plaintiff Fails to State an Unreasonable Seizure Claim
10 Against Defendants Larson, Rose, and Garcia

11 Plaintiff asserts a Fourth Amendment unreasonable seizure
12 claim against Defendants Larson, Rose, and Garcia for detaining
13 Frey at gunpoint for over fifteen minutes, alleging the length
14 and manner of the stop were unreasonable and excessive given that
15 Defendants were investigating "the non-violent crime of
16 trespassing," Frey was "calm and non-threatening" during the
17 encounter, and Frey left the property when Defendant Rose
18 arrived. SAC ¶¶ 77-80. Defendants argue the seizure was
19 reasonable as Defendants Larson, Rose, and Garcia were responding
20 to a 911 call reporting Frey was allegedly trespassing on private
21 property and briefly detained Frey to investigate that suspected
22 offense. Mot. Dismiss at 6. Defendants argue that the stop was
23 further justified when Frey attempted to leave the scene, thereby
24 directly disobeying Defendant Rose's command that he was being
25 detained. Id.

26 The Court finds that Frey was not unreasonably seized and
27 dismisses this claim. The Fourth Amendment protects citizens
28 from unreasonable searches and seizures and precludes arrest

1 without probable cause. U.S. Const. amend. IV. Brief seizures
2 that fall short of a traditional arrest do not violate the Fourth
3 Amendment "if the officer has a reasonable suspicion supported by
4 articulable facts that criminal activity may be afoot." Bradford
5 v. City of Seattle, 557 F. Supp. 2d 1189, 1197-98 (W.D. Wash.
6 2008) (internal quotations omitted); see also Terry v. Ohio, 392
7 U.S. 1, 23-27 (1968). In analyzing whether a so-called Terry
8 stop is justified by an officer's reasonable suspicion, courts
9 consider whether, "in light of the totality of the circumstances,
10 the officer had 'a particularized and objective basis for
11 suspecting the particular person stopped of criminal activity.'"
12 United States v. Berber-Tinoco, 510 F.3d 1083, 1087 (9th Cir.
13 2007) (quoting United States v. Cortez, 449 U.S. 411, 417-18
14 (1981)). This is not a particularly high threshold to reach and
15 requires only a minimal level of objective justification. United
16 States v. Bontemps, 977 F.3d 909, 915 (9th Cir. 2020); Illinois
17 v. Wardlow, 528 U.S. 119, 123 (2000). A telephone tip to police
18 can provide the basis for a Terry stop, so long as the tip bears
19 "sufficient indicia of reliability to provide reasonable
20 suspicion" United States v. Edwards, 761 F.3d 977, 983
21 (9th Cir. 2014).

22 Here, Defendant Rose initially detained Frey in response to
23 a 911 call in which the caller reported a man who appeared to be
24 either intoxicated or under the influence of drugs was
25 trespassing on his property. SAC ¶¶ 28-32. When Defendant Rose
26 arrived, Frey was at or near the property in question sitting
27 beneath a tree. Id. ¶ 31. Plaintiff admits that "[t]he
28 informant here was not entirely inaccurate, as Mr. Frey was in

1 the general area of E. Monte Vista Ave. and did in fact have a
2 knife as the caller reported." Opp'n at 9. Plaintiff also
3 concedes that Frey later moved in a manner "consistent with the
4 911 caller's reports that he was intoxicated." SAC ¶ 57. Given
5 these facts, the Court finds that the 911 call had sufficient
6 indicia of reliability to provide Defendant Rose with reasonable
7 suspicion Frey was or had been trespassing on the caller's
8 property, and to briefly seize Frey to investigate the alleged
9 trespass, which he attempted to do by telling Frey he was not
10 free to leave. The Court also finds that, when Frey disregarded
11 that order, he created further lawful justification for his
12 continued detention under California Penal Code section 148(a),
13 which prohibits resisting or delaying an officer. See United
14 States v. Taylor, 60 F.4th 1233, 1239, 1242 (9th Cir. 2023)
15 (prolonging a detention is permissible where there is reasonable
16 suspicion of an independent offense).

17 In opposition, Plaintiff relies on photographs and publicly
18 available data to argue that the seizure was unreasonable as Frey
19 "was visibly not trespassing on private property." Opp'n at 4-5,
20 8-9. Neither the photographs nor the data are referenced in the
21 Second Amended Complaint, and they may not be considered here.
22 See United States v. Ritchie, 342 F.3d 903, 907-08 (9th Cir.
23 2003) ("A court may [only] consider certain materials—documents
24 attached to the complaint, documents incorporated by reference in
25 the complaint, or matters of judicial notice—without converting
26 the motion to dismiss into a motion for summary judgment.").
27 Further, even if Frey were on public property by the time
28 Defendant Rose arrived at the scene, that does not negate the

1 possibility he had previously been trespassing on the 911
2 caller's land.

3 In short, the Court finds that Frey's detention by
4 Defendants was supported by reasonable suspicion. Thus,
5 Plaintiff's second cause of action for unreasonable seizure
6 against Defendants Rose, Larson, and Garcia is dismissed.
7 Further, the Court finds that amendment would be futile, as there
8 are no further facts he could plead to establish Defendants
9 lacked reasonable suspicion when they detained Frey. Thus, the
10 Court denies leave to amend this claim.

11 D. Plaintiff Sufficiently States a Negligence Claim
12 Against Defendants Rose and Garcia

13 Plaintiff asserts a negligence claim against Defendants Rose
14 and Garcia premised on their failure to de-escalate the situation
15 with Frey and command that Frey drop his knife or be bitten by a
16 K9 officer while waiting for the crisis negotiation team, which
17 Plaintiff contends resulted in the use of deadly force by
18 Defendant Larson. SAC ¶¶ 121-29. Defendants argue that this
19 claim must be dismissed against Defendants Rose and Garcia
20 because "[t]here are no allegations creating a legal duty as to
21 these Defendants under California law." Mot. Dismiss at 7.

22 The Court disagrees. Under California negligence law, a
23 plaintiff must show that the defendant has "a legal duty to use
24 due care, a breach of such legal duty, and the breach as the
25 proximate or legal cause of the resulting injury." Vasilenko v.
26 Grace Fam. Church, 3 Cal. 5th 1077, 1083 (2017) (quoting Beacon
27 Residential Cmty. Assn. v. Skidmore, Owings & Merrill LLP, 59
28 Cal. 4th 568, 573 (2014)). The California Supreme Court has long

1 recognized that law enforcement officers have a duty to act
2 reasonably when using deadly force against a suspect. See Hayes
3 v. Cnty. of San Diego, 57 Cal. 4th 622, 629 (2013). "California
4 courts also recognize a special duty by law enforcement to use
5 reasonable care when arresting or detaining an individual because
6 '[o]nce in custody, an arrestee is vulnerable, dependent, subject
7 to the control of the officer and unable to attend to his or her
8 own medical needs.'" Alves v. Cnty. of Riverside, 135 F.4th
9 1161, 1170 n.9 (9th Cir. 2025) (quoting Frausto v. Dep't of Cal.
10 Highway Patrol, 53 Cal. App. 5th 973, 993 (2020)). "The
11 reasonableness of an officer's conduct is determined in light of
12 the totality of the circumstances." Hayes, 57 Cal. 4th at 629.

13 Here, Plaintiff argues that Defendants owed Frey a
14 reasonable duty of care while detaining him and breached this
15 duty by failing to "employ better negotiation tactics rather than
16 continuing to shout commands at Mr. Frey, who was unresponsive,
17 while pointing guns at him," and "informing Mr. Frey that if he
18 did not comply with orders, the K9 would be released," tactics
19 which "further escalated a tense situation." Opp'n at 10.
20 Defendants Rose and Garcia argue they did not owe Frey a duty of
21 care because they did not use deadly force against him. Mot.
22 Dismiss at 7. However, Defendants fail to address California
23 case law which holds that a police officer owes a reasonable duty
24 of care to an arrestee. See Frausto, 53 Cal. App. 5th at 993.

25 As Plaintiff has alleged Defendants Rose and Garcia
26 negligently failed to exercise reasonable care while detaining
27 Frey, the Court finds Plaintiff has sufficiently pled a legal
28 duty. Thus, Defendants' motion to dismiss Plaintiff's sixth

1 cause of action against Defendants Rose and Garcia is denied.

2 E. Plaintiff Fails to State a Bane Act Claim Against
3 Defendants Rose and Garcia

4 Finally, Plaintiff asserts a claim under the Bane Act
5 against Defendants Rose and Garcia premised on his excessive
6 force and unreasonable seizure claims. SAC ¶¶ 131-35.
7 Defendants Rose and Garcia argue this claim must be dismissed
8 because Plaintiff has failed to plead "any underlying
9 constitutional violation attributable to Rose or Garcia." Reply
10 at 3-4, ECF No. 42.

11 The Court agrees. The Bane Act provides a private cause of
12 action against any person who, "whether or not acting under color
13 of law, interferes by threat, intimidation, or coercion . . .
14 with the exercise or enjoyment by any individual or individuals
15 of rights secured by the Constitution or laws of the United
16 States . . ." Cal. Civ. Code § 52.1(b). "The elements of a
17 Bane Act claim are essentially identical to the elements of a
18 [section] 1983 claim, with the added requirement that the
19 government official had a 'specific intent to violate' a
20 constitutional right." Hughes v. Rodriguez, 31 F.4th 1211, 1224
21 (9th Cir. 2022). Given that Plaintiff has failed to plausibly
22 plead his section 1983 excessive force and unreasonable seizure
23 claims against Defendants Rose and Garcia, the Court dismisses
24 Plaintiff's seventh cause of action against these Defendants.
25 See, e.g., Gomez v. Cnty. of Los Angeles, No. CV 09-02457 MMM
26 (C.Wx), 2009 WL 10699670, at *16 (C.D. Cal. Aug. 17, 2009)
27 (dismissing Bane Act claim for failure to plead constitutional
28 violation). The Court also denies leave to amend as to this

1 claim given that the Court has dismissed Plaintiff's excessive
2 force and unreasonable seizure claims against Defendants Rose and
3 Garcia without leave to amend.

4 **IV. ORDER**

5 For the reasons above, Defendants' Motion to Dismiss (ECF
6 No. 38) is GRANTED in part as follows:

7 1. Plaintiff's first cause of action for excessive force
8 is DISMISSED against Defendants Rose and Garcia WITHOUT LEAVE TO
9 AMEND;

10 2. Plaintiff's second cause of action for unreasonable
11 seizure is DISMISSED against Defendants Rose, Larson, and Garcia
12 WITHOUT LEAVE TO AMEND; and

13 3. Plaintiff's seventh cause of action for violations of
14 the Bane Act is DISMISSED against Defendants Rose and Garcia
15 WITHOUT LEAVE TO AMEND.

16 However, the Court DECLINES to dismiss Plaintiff's Second
17 Amended Complaint for lack of standing and Plaintiff's sixth
18 cause of action for negligence against Defendants Rose and
19 Garcia.

20 IT IS SO ORDERED.

21 Dated: October 29, 2025

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23 JOHN A. MENDEZ,
24 SENIOR UNITED STATES DISTRICT JUDGE
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